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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

MARTHA ZEPEDA OLIVARES, individually
and on behalf of the ESTATE OF
MAXIMILIANO SOSA, JR.;
MAXIMILIANO SOSA, SR.,

Plaintiffs,

v.

CITY OF FRESNO; **FRESNO POLICE**
OFFICER JOHN AYERS; FRESNO POLICE
OFFICE BRANDON CROCKETT; FRESNO
POLICE OFFICER JONATHAN ABRAHAM;
FRESNO POLICE OFFICER ANTHONY
AGUILAR; UNKNOWN LAW
ENFORCEMENT OFFICERS; FORMER
POLICE CHIEF PACO BALDERRAMA; and
DOES 1-30,

Defendants.

Case No. 1:23-cv-01575-JLT-SAB

**THIRD AMENDED COMPLAINT FOR
DAMAGES AND WRONGFUL DEATH;
CALIFORNIA CODE OF CIVIL
PROCEDURE § 377.32 DECLARATION**

42 U.S.C. § 1983

- Fourth Amendment-Excessive Force
- Violation of Plaintiff's Right to Familial Relationship
- Municipal/Supervisory Liability-Failure to Train and Supervise
- Municipal Liability-Unconstitutional Custom Practice or Policy

Americans With Disabilities Act and the Rehabilitation Act

Negligence

Wrongful Death

Bane Act (Cal. Civ. Code §52.1)

Unruh Act (Cal. Civ. Code § 51)

Assault/Battery

JURY TRIAL DEMANDED

TO THE HONORABLE COURT:

Plaintiffs Martha Zepeda Olivares, individually and on behalf of the Estate of Maximiliano Sosa, Jr., and Maximiliano Sosa, Sr., through their undersigned counsel, hereby

THIRD AMENDED COMPLAINT

1 make the following amended allegations against the defendants, and each of them, pursuant to
2 **FRCP 15(a):**

3 **JURISDICTION AND VENUE**

4 1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
5 1343, as it presents federal civil rights claims against state actor defendants and a municipal
6 defendant. This Court has venue over this action pursuant to 28 U.S.C. § 1391(b)(2), as all of
7 the underlying actions took place in this judicial district. Plaintiffs are informed and believe
8 that venue is also proper under 28 U.S.C. § 1391(b)(1).

9 2. Plaintiffs fulfilled all the jurisdictional prerequisites to asserting their state law claims,
10 including by submitting a timely claim for damages that has been rejected by the City of
11 Fresno.

12 **PARTIES**

13 3. Plaintiff Martha Zepeda Olivares (hereinafter “Martha”) is an adult resident of the
14 County of Fresno. Zepeda is the mother of Maximiliano Sosa, Jr., (hereinafter “Max”), who
15 died on November 4, 2023.

16 4. Martha also is the successor in interest and legal representative of the Estate of
17 Maximiliano Sosa, Jr.. Martha is Max’s mother. Attached as Exhibit A is the declaration
18 required by California Code of Civil Procedure §377.32. Max’s death certificate is pending
19 and will be submitted as soon as it becomes available.

20 5. Plaintiff Maximiliano Sosa, Sr. (hereinafter “Max, Sr.”) is an adult resident of the
21 County of Fresno. Max, Sr. is Max’s father.

22 6. Max died on November 4, 2023, at the age of 33 years old. Max was a resident of
23 Fresno County. Max was legally separated under the meaning of California Family Code §
24 70, as he and his estranged spouse, Maria Sosa, had been living apart since February 2023 and
25 had both verbally and through their conduct expressed an intention not to reconcile but instead
26 to end their marriage. Moreover, because Max and Maria Sosa were legally separated at the
27 time of this incident and also were living apart, she has no interest in this action pursuant to
28 **California Family Code § 781. Therefore, Max’s only successors in interest as defined under**

1 California Code of Civil Procedure §§ 377.11, and 377.30-377.32 are his surviving parents,
2 Martha and Max, Sr., and his two sons, ages 4 and 2 years old. Given their young age, Max's
3 surviving children are obviously not eligible to represent his interests in this proceeding.

4 7. Defendant City of Fresno is and at all times mentioned herein a municipal corporation,
5 duly authorized to operate under the laws of the State of California. Under its supervision, the
6 City of Fresno operates the Fresno Police Department (hereinafter "FPD"). City of Fresno is
7 primarily responsible for funding and supervising the Fresno Police Department, which is the
8 law enforcement agency with primary jurisdiction for investigating the alleged incident
9 underlying this case.

10 8. Defendant Fresno Police Officer John Ayers ("Officer Ayers") is, upon information and
11 belief, a citizen and resident of the State of California, County of Fresno. With respect to all
12 of the acts complained of herein, Officer Ayers was acting as an officer and employee of the
13 Fresno Police Department. At all material times herein, Officer Ayers acted individually and
14 within the course and scope of his employment with the Fresno Police Department. Officer
15 Ayers is sued in his individual capacity for acts he performed under the color of law.

16 9. Defendant Fresno Police Officer Brandon Crockett ("Officer Crockett") is, upon
17 information and belief, a citizen and resident of the State of California, County of Fresno.
18 With respect to all of the acts complained of herein, Officer Crockett was acting as an officer
19 and employee of the Fresno Police Department. At all material times herein, Officer Crockett
20 acted individually and within the course and scope of his employment with the Fresno Police
21 Department. Officer Crockett is sued in his individual capacity for acts he performed under
22 the color of law.

23 10. Defendant Fresno Police Officer Jonathan Abraham ("Officer Abraham") is, upon
24 information and belief, a citizen and resident of the State of California, County of Fresno.
25 With respect to all of the acts complained of herein, Officer Abraham was acting as an officer
26 and employee of the Fresno Police Department. At all material times herein, Officer Abraham
27 acted individually and within the course and scope of his employment with the Fresno Police
28 Department. Officer Abraham is sued in his individual capacity for acts he performed under

1 the color of law.

2 11. Defendant Fresno Police Officer Anthony Aguilar (“Officer Aguilar”) is, upon
3 information and belief, a citizen and resident of the State of California, County of Fresno.
4 With respect to all of the acts complained of herein, Officer Aguilar was acting as an officer
5 and employee of the Fresno Police Department. At all material times herein, Officer Aguilar
6 acted individually and within the course and scope of his employment with the Fresno Police
7 Department. Officer Aguilar is sued in his individual capacity for acts he performed under the
8 color of law.

9 12. Defendant Former Chief of Police Paco Balderrama (“Chief Balderrama”) at all
10 material times was employed as Chief of Police by Defendant City of Fresno and was acting
11 within the course and scope of that employment. As Chief of Police, Defendant Chief
12 Balderrama was a policy-making official for the City of Fresno with the power to make
13 official and final policy for the Fresno Police Department. Defendant Chief Balderrama is
14 being sued in his individual capacity.

15 13. Plaintiffs are ignorant of the true names and/or capacities of defendants sued herein as
16 Unknown Law Enforcement Officers, and therefore sue said defendants by such fictitious
17 names. Plaintiffs will amend this complaint to allege these defendants' true names and
18 capacities when ascertained. Plaintiffs believe and allege that each of these fictitious
19 defendants is legally responsible and liable for the incident, injuries and damages hereinafter
20 set forth.

21 14. When the actions of Officers Ayers, Crockett, Abraham and Aguilar, as well as the
22 Unknown Law Enforcement Officers, cannot be specifically attributed to one individual given
23 the current state of discovery, they are collectively referred to as “the Individual Defendant
24 Officers.”

25 STATEMENT OF FACTS

26 15. Max was gainfully employed as a diesel mechanic at the time of his death. Max had no
27 criminal record, no mental health history, no drug use history, no history of alcohol abuse, and
28 no history of violence. Max had attended a few sessions of marriage counseling earlier in

1 February and March 2023 with Maria Sosa, but not for the purpose of addressing any mental
2 health disorder.

3 16. During the course of the evening of November 3, 2023 and the early morning of
4 November 4, 2023, Max had developed emotional distress and was having a mental health
5 episode that resulted in his being disabled for purposes of federal and state law. Max had
6 informed the 911 dispatcher that he had no intention of hurting anyone but that he wanted
7 officers to kill him. Clearly in a mental health crisis.

8 17. Although clearly troubled by the ending of his marriage, Max was leading a normal
9 life, i.e., working and spending time with family and friends, in the months, weeks and days
10 leading up to the incident that resulted in his death. Just hours before his death, Max had
11 attended his nephew's high school football game and took this photo.



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18 18. Available video footage shows that Max does not appear to be highly intoxicated or
19 under the influence of drugs at the time of his death on November 4, 2023. He was driving
20 capably and walking normally. Indeed, Max helped a seemingly intoxicated Maria Sosa back
21 to her apartment at 2:15 a.m., just hours before his death. The apartment is within the
22 complex known as the Dante Apartments, 5555 N. Dante Avenue, Fresno, California 93722.

23 19. Max was summoned back to the apartment complex where Maria Sosa lived for reasons
24 that still remain unknown at approximately 3:10 a.m., after he had left only approximately 15
25 minutes earlier.
26

27 20. Available video footage shows that Max left Maria Sosa's apartment complex again at
28 approximately 3:30 a.m. Max was still walking and behaving normally and did not appear to

1 be under the influence of anything. Max returned to the apartment complex again
2 approximately 15 minutes later, by which time the Individual Defendant Officers were on
3 scene. Appearing to have no desire to interact with law enforcement, Max left the apartment
4 complex without exiting his vehicle.

5 21. Max returned to the apartment complex yet again at approximately 4:35 a.m. Max
6 parked right next to a Fresno Police vehicle and began walking normally towards Maria Sosa's
7 apartment. Upon walking up to the apartment door, Plaintiffs are informed and believe that the
8 Individual Defendant Officers were on scene, and one of them opened the door and allowed
9 Max to walk in.

10 22. Upon entry into the apartment, Max entered holding a pair of scissors, but they were
11 held down at his side and not in a position where they presented an imminent threat of death
12 or bodily harm to anyone else. Max was clearly exhibiting signs of being in a mental health
13 crisis and wanting to be killed by law enforcement, but he was not doing anything justifying
14 the use of deadly force against him.

15 23. At this point, the Individual Defendant Officers approached the apartment and stood in
16 the doorway. While he was inside the apartment, Max never appeared to be a threat requiring
17 the use of deadly force. Instead, Max was clearly in the midst of a mental health crisis where
18 he was expressing suicidal ideations and a desire to be shot and killed.

19 24. As two of the Individual Defendant Officers standing inside the apartment walked
20 towards the outside of the apartment near the entry, another individual defendant officer inside
21 indicated that he would leave the apartment with Maria Sosa. At this point, Max indicated that
22 was not a problem. Max further indicated that he would never hurt Maria, as she was the
23 mother of his children. One of the Individual Defendant Officers located inside the apartment
24 then told Max, "Get out, Get out."

25 25. At this point, Max started to walk toward the front door, following the direction of one
26 of the Individual Defendant Officers to exit. While Max still had scissors in his left hand,
27 which was his non-dominant hand, he was not holding them or using them in a manner that
28 justified the use of deadly force on him or presented a risk of death or imminent bodily harm

1 to any third party.

2 26. Almost immediately upon crossing the threshold and exiting the front door of the
3 apartment, one of the Individual Defendant Officers shot Max with a taser, which was both
4 ineffective and only served to exacerbate the already tense situation. Max then ran forward
5 with his head and his hands down and was shot multiple times by at least one of the Individual
6 Defendant Officers. Max died almost instantly. Max was not doing anything that justified a
7 use of deadly force against him at the time he was shot and killed. Instead, he was clearly in
8 need of mental health assistance.

9 27. At no point during this nearly two hour incident did any of the Individual Defendant
10 Officers utilize the mental health crisis resources that were available to it and that policy
11 required them to use. At no point during this incident was Max connected to any mental
12 health services, either telephonically or in person, despite his obvious willingness to speak
13 with the Individual Defendant Officers at length.

14 28. Despite the plethora of tactical options and strategic advantages possessed by the law
15 enforcement personnel on scene, deadly force was used, and in the absence of any apparent
16 justification. The Individual Defendant Officers instead fired on Max when he was non-
17 dangerous.

18 29. Max was the subject to attempts to preserve his life after the shooting, which endured
19 for several minutes before it was determined that his life could not be saved.

20 30. As a result of Max's death, his family, including Martha and Max, Sr. are devastated.
21 Max leaves behind two children he loved dearly, as well as many close family members and
22 friends.

23 **FIRST CAUSE OF ACTION**

24 **Violation of Fourth Amendment of the United States Constitution**

25 **(42 U.S.C. § 1983)**

26 **(On Behalf of the Estate of Maximiliano Sosa, Jr. Against All Individual Defendants)**

27 31. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs of this
28 complaint.

1 32. The Individual Defendant Officers, acting under color of law, committed the above-
2 described conduct that violated Max's rights, as provided for under the Fourth Amendment to
3 the United States Constitution, to be free from excessive and/or arbitrary and/or unreasonable
4 use of deadly force against him.

5 33. The Individual Defendant Officers acted under the color of law as police officers, used
6 excessive force against Max. When Max walked out of the apartment calmly, officers used a
7 taser on him at a close distance. In automatic reaction to the taser, Max's body moved but did
8 not appear to be in the direction of the officers. In response, officers shot Max. All of these
9 actions were excessive and unreasonable, especially because Max posed no immediate threat
10 of death or serious bodily injury to any officer or anyone else at that time.

11 34. The Individual Defendant Officers' unjustified shoot deprived Max of his right to be
12 secure in his person against unreasonable searches and seizures as guaranteed to him under the
13 Fourth Amendment to the United States Constitution and applied to state actors by the
14 Fourteenth Amendment and made actionable by §1983.

15 35. As a direct and proximate result of the acts and omissions set forth above, Max
16 sustained injuries and damages as alleged above, including but not limited to physical pain,
17 suffering and emotional distress up to the time of his death, and then loss of enjoyment of life,
18 and loss of life thereafter.

19 36. Max was forced to endure great conscious pain and suffering because of the Individual
20 Defendant Officers' conduct before his death.

21 37. Max did not file a legal action before his death.

22 38. Max's estate, represented by Martha, is the successor in interest of Max's claims
23 damages for the conscious pain and suffering incurred, as provided for under 42 U.S.C. §1983.

24 39. The Individual Defendant Officers' conduct was willful, wanton, malicious, and done
25 with conscious and reckless disregard for the rights and safety of Max, and therefore warrants
26 the imposition of exemplary and punitive damages against him.

27 40. The Individual Defendant Officers acted under color of law by shooting and killing Max
28 without lawful justification and subjecting decedent to excessive force thereby depriving him

1 of certain constitutional protected rights, including, but not limited to, the right to be free from
2 unreasonable searches and seizures, as guaranteed by the Fourth Amendment to the United
3 States Constitution.

4 41. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

5 **SECOND CAUSE OF ACTION**

6 **Violations of Civil Rights to Familial Relationship**

7 **(42 U.S.C. §1983)**

8 **(On Behalf of Plaintiffs Martha Zepeda Olivares and Maximiliano Sosa, Sr.**

9 **and Against All Individual Defendants)**

10 42. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs of this
11 complaint.

12 43. The Individual Defendant Officers, acting under color of law, and without due process
13 of law, deprived Plaintiffs of their substantive due process rights to continued familial
14 relations without government interference.

15 44. Plaintiff Martha Zepeda Olivares and Maximiliano Sosa, Sr. have cognizable interests
16 under the Due Process Clause of the Fourteenth Amendment of the United States Constitution
17 to be free from state actions that deprive their son of life in such a manner as to shock the
18 conscience, including but not limited to unwarranted state interference in Plaintiffs' familial
19 relationship with their son, Max.

20 45. Max had had a cognizable interest under the Due Process Clause of the Fourteenth
21 Amendment of the United States Constitution to be free from state actions that deprive him of
22 life, liberty, or property in such a manner as to shock the conscience.

23 46. Individual Defendant Officers' shooting at Max while he walked out of the apartment
24 and had an involuntary reaction to being tased and not posing a threat to anyone, shocks the
25 conscience. Individual Defendant Officers acted with deliberate indifference to the
26 constitutional rights of Max and Plaintiffs Martha Zepeda Olivares and Maximiliano Sosa, Sr.,
27 and with a purpose to harm unrelated to any legitimate law enforcement objective.
28 Specifically, the following, actions, individually and collectively, shock the conscience:

- 1 • Shooting at a person while having an involuntary reaction to being tased.
- 2 • Shooting a person who has been interacting with officers and attempted to walk out of
- 3 the apartment.
- 4 • Shooting at a person having a mental health crisis.
- 5 • Shooting a person who is posed no threat to anyone except himself due to his mental
- 6 health crisis, who actually said, he would not hurt anyone but himself.
- 7 • Shooting a person while they were falling down from being tased.
- 8 • Shooting a person who was not suspected of having recently committed a crime
- 9 involving the infliction or threatened infliction of serious physical harm.
- 10 • Shooting a person who was not posing an immediate threat to anyone else, or the
- 11 officers.
- 12 • Shooting a person who was not threatening the shooting officer at the time of the fatal
- 13 shooting.
- 14 • Shooting a person who was not threatening to harm any individual person

15 47. As a direct and proximate result of these actions, the Individual Defendant Officers
16 violated the substantive due process rights of Plaintiffs to be free from unwarranted
17 interference with their familial relationship with their son Max, and Plaintiffs suffered injuries
18 and damages including physical pain, suffering and emotional distress, mental anguish, and
19 the deprivation of the life-long love, companionship, comfort, support, society, care, and
20 sustenance of their son, and will continue to be so deprived for the remainder of their lives.

21 48. The Individual Defendant Officers, acting under color of law, and without due process
22 of law, deprived Plaintiffs of their substantive due process rights to continued familial
23 relations without government interference.

24 49. The Individual Defendant Officers specifically committed this misconduct by using
25 unreasonable, unjustified, and excessive deadly force against Max, which caused injuries
26 resulting in his death, as alleged hereinabove.

27 50. The conduct of the Individual Defendant Officers was willful, wanton, malicious, and
28 done with conscious and reckless disregard for the rights and safety of their son Max and

1 Plaintiffs, and therefore warrants the imposition of exemplary and punitive damages.

2 51. The Individual Defendant Officers specifically committed this misconduct by using
3 unreasonable, unjustified and excessive deadly force against Max, which caused injuries
4 resulting in his death, as alleged hereinabove.

5 52. These Individual Defendant Officers also attempted to conceal their misconduct and
6 hide the true cause of Max's demise to deprive Plaintiffs of their rights to seek redress in
7 violation of their rights, privileges, and immunities secured by the Fourteenth Amendment to
8 the United States Constitution.

9 53. The Individual Defendant Officers' misconduct in these respects was the proximate
10 cause of injury to Plaintiffs.

11 54. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

12 **THIRD CAUSE OF ACTION**

13 **Municipal/Supervisory Liability – Failure to Train and Supervise**

14 **(42 U.S.C. §1983)**

15 **(On Behalf of All Plaintiffs Against Defendants City of Fresno**

16 **and Former Chief Balderrama)**

17 55. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs of this
18 complaint.

19 56. Plaintiffs are informed and believe and thereon allege that City of Fresno's offending
20 customs, policies, and/or practices were the moving force behind the constitutional violations
21 set forth in the foregoing causes of action, as well as the lack of required supervision by
22 Defendant Former Chief Balderrama.

23 57. Plaintiffs are specifically informed and believe that City of Fresno, through the Fresno
24 Police Department and Chief Balderrama, has failed to train, investigate, discipline, or
25 supervise its officers, members, most of whom have been involved in repeated unreasonable
26 uses of deadly or injurious force. Notwithstanding any formal written policies that ostensibly
27 exist, officers are permitted as a practical matter to use deadly force with impunity, with no
28 meaningful scrutiny, consequences or changes made in how the FPD responds to incidents.

1 Plaintiffs are also informed and believe that these illicit customs, policies and/or practices
2 have been condoned and ratified by those in final decision-making positions. Plaintiffs
3 anticipate supplementing the bases for municipal liability as discovery proceeds.

4 58. The City of Fresno's failures included, but are not limited to, training and supervising
5 officers that reasonable alternative non-lethal tactics should be used to control subjects who do
6 not appear to pose an imminent threat of serious injury or harm; are in the midst of a mental
7 health crisis and that where reasonable opportunities for de-escalation of potentially
8 threatening subjects exist, that officers should use effective communication that is not
9 confrontational, escalating, or demanding; reasonably creating time and distance to help de-
10 escalate, to allow the use of effective communication, and to allow the continuing opportunity
11 to use non-lethal tactics, which must be employed to defuse a potential threat in place of lethal
12 force under all circumstances other than those rare occasions, not present here, where deadly
13 force is necessary to prevent the infliction of imminent death or great bodily injury by the
14 person shot and by obtaining proper mental health services.

15 59. Before the Individual Defendant Officers' shooting of Max, the City and its decision
16 makers and the entire Fresno Police command staff and chain of command, up to and
17 including the Chief of Police, knew the Individual Defendant Officers had a propensity for
18 violence, that they had a propensity to shoot. The City of Fresno and its managers, including
19 Chief Paco Balderrama, did not take the necessary steps to prevent the unnecessary shooting
20 of individuals. These Defendants have not taken the necessary steps to prevent the Individual
21 Defendant Officers and other PFD officers from using inappropriate tactics, including
22 excessive force and unnecessary deadly force, during encounters with individuals.

23 60. Defendants City of Fresno and Chief Balderrama were deliberately indifferent to the
24 obvious consequences of their failure to train and supervise officers adequately. This failure
25 caused the deprivation of Max's rights alleged above. The failure to train and supervise was so
26 closely related to the deprivation as to be the moving force causing the ultimate injuries.

27 61. Had the Individual Defendant Officers been properly trained and supervised, they
28 would have known not to shoot someone when their body was involuntarily reacting to being

1 tased, that was in need of mental health services, that intentionally informed that he did not
2 pose a threat to anyone other than himself. Instead, they would have known that they had to
3 use other tactics, such as coordinating with mental health services, and de-escalating Max's
4 threat of self-harm.

5 62. Had Defendants City of Fresno and Chief Balderrama properly trained and supervised
6 their officers, the Individual Defendant Officers would have been deterred from firing out of
7 concern that their unconstitutional use of deadly force would have severe consequences on
8 their conditions of employment and expose them to criminal prosecution. To the contrary, the
9 Individual Defendant Officers shot Max as he fell from being tased.

10 63. As a direct and proximate result of the acts and omissions of their acts or omissions set
11 forth above, Max and Plaintiffs sustained injuries and damages as alleged above, including but
12 not limited to Max's physical pain suffering, and emotional distress up to the time of his death,
13 loss of enjoyment of life and loss of life, Plaintiff's wrongful death damages, and Plaintiff's
14 emotional distress at the death of their son.

15 64. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **FOURTH CAUSE OF ACTION**

17 **Municipal Liability-Unconstitutional Custom, Practice, or Policy**

18 **(42 U.S.C. §1983)**

19 **(On Behalf of All Plaintiffs Against Defendant City of Fresno)**

20 65. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
21 complaint.

22 66. Defendants Individual Defendant Officers deprived Max of his rights under the United
23 States Constitution as alleged above.

24 67. Former Chief Jerry Dyer was a final policy-making authority for the City of Fresno
25 Police Department until Former Chief Paco Balderrama became chief in 2021. See Cal. Gov.
26 Code § 38630(a); Fresno Police Dept. Policy Manual 200. ([https://www.fresno.gov/police/wp-](https://www.fresno.gov/police/wp-content/uploads/sites/5/2022/10/PolicyManual-Redacted-July-2022_Redacted.pdf)
27 [content/uploads/sites/5/2022/10/PolicyManual-Redacted-July-2022_Redacted.pdf](https://www.fresno.gov/police/wp-content/uploads/sites/5/2022/10/PolicyManual-Redacted-July-2022_Redacted.pdf))

28 68. The unconstitutional actions and/or omissions of the Individual Defendant Officers

1 were pursuant to the following customs, practices, and/or policies which were directed,
2 encouraged, allowed, and/or ratified by policy making officials for the City of Fresno:

3 a. Using or tolerating the use of excessive force, including but not limited to using or
4 tolerating excessive unlawful deadly force including permitting and affirmatively
5 training officers (i) to use deadly force when faced with less than an immediate threat
6 of death or serious bodily injury; (ii) not obtaining proper help to those in mental
7 health crisis and (iii) to use deadly force prematurely, or as a “first resort,” or when
8 facing a merely potential threat;

9 b. Allowing police officers who had demonstrated a pattern of using unreasonable force,
10 such as a history of officer-involved-shootings to continue on patrol, posing a danger
11 to the public of continuing to use excessive force without remediation, retraining or
12 discipline;

13 c. Covering up or tolerating violations of constitutional rights, including but not limited by
14 any or all of the following:

15 i. Failing to properly obtain mental health services;

16 ii. Failing to properly investigate and/or evaluate complaints or incidents of
17 excessive and unreasonable force, officer-involved shootings, law enforcement
18 related deaths, and unlawful seizures;

19 iii. Failing to promptly, independently, thoroughly, and properly investigate and
20 address officer involved shootings and other law enforcement related deaths;

21 iv. Ignoring and/or failing to properly and adequately investigate and discipline
22 unconstitutional or unlawful police activity; and

23 v. Finding that excessive force is “within policy;” and

24 vi. Encouraging, accommodating, or facilitating a “code of silence,” under which
25 officers do not report each other’s errors, misconduct, or crimes.

26 d. Using or tolerating inadequate, deficient, and improper procedures for handling,
27 investigating, and reviewing complaints of officer misconduct;

28 e. Failing to have and enforce necessary and appropriate and lawful policies, procedures,

1 and training programs to prevent or correct the unconstitutional conduct, customs, and
 2 procedures described in this Complaint, with deliberate indifference to the rights and
 3 safety of Max and the public and in the face of an obvious need for such policies,
 4 procedures, and training programs to prevent recurring and foreseeable violations of
 5 rights of the type described herein;

6 f. Failing to train officers that reasonable available non-lethal tactics must be used against
 7 people who do not pose an imminent threat of serious injury or harm or that are solely
 8 in need of mental health services; and

9 g. Failing to train officers that where reasonable opportunities for obtaining mental health
 10 help, de-escalation of potentially threatening individuals exist, that the use of effective
 11 communication that is not confrontational, escalating, or demanding; reasonably
 12 creating time and distance to help de-escalate, to allow the use of effective
 13 communication, and to allow the continuing opportunity to use non-lethal tactics
 14 which must be employed to defuse a potential threat in place of lethal force.

15 69. Defendant City of Fresno's policy makers and managers, including former Chief of
 16 Police Dyer and former Chief Balderrama knew of the deficient customs, practices, and/or
 17 policies alleged above. Despite having that knowledge, these defendants condoned, tolerated
 18 and through actions and inactions thereby ratified such policies. Defendants thus acted with
 19 deliberate indifference to the foreseeable effects and consequences of their policies, practices,
 20 and customs with respect to the constitutional rights of Max and others similarly situated.

21 70. Defendant City of Fresno maintained, promulgated, and tolerated unconstitutional
 22 customs, practices, and/or policies, as further demonstrated by various incidents involving
 23 police officers' uses of unreasonable and excessive force, including the following lawsuits
 24 resulting in settlements or verdicts against the City:

25 a. *Oliver Hernandez et al v. City of Fresno*: alleged that after a roughly six-hour standoff
 26 at the Village Apartments on 9th street, police said he was armed with an ax, while his
 27 family state he was sitting down when he was shot and was not an immediate threat to
 28 anyone because he was alone. The case has a currently undisclosed settlement waiting

1 for approval by the City Counsel as of 2023.

2 b. Isiah Murrietta-Golding, Deceased, through his successor in Interest *Christina Pauline*
 3 *Lopez, et al v. City of Fresno*, Case No. 1:18-cv-00314-AWI-SKO: alleged that the
 4 now deceased Isiah, just merely 16 years old was shot in the back as he fled from
 5 police in 2017. The case settled for 4.9 million in 2021.

6 c. *Estate of Casimero Casillas, et al v. City of Fresno*, Case No. 1:16-cv-01042-AWI-SAB:
 7 alleged that the now deceased 45-year-old Casimero Casillas fled from a traffic stop,
 8 police chased Casillas after attempting to pull him over, for his passenger's failure to
 9 wear a seat belt. Casillas made it to a home where he entered. The officer entered the
 10 home and shot Casillas. The case settled for 4.4 million in 2021.

11 d. *Landon Wallace v. City of Fresno*, Case No. 1:19-cv-1199-AWI-SAB: alleged that
 12 during a probation sweep an officer rounded up several suspects at an apartment
 13 complex, a fight between several officers, and the then 17-year-old Wallace. Before
 14 Wallace could sit down, FPD Officer Christopher Martinez attacked, punched, and
 15 tackled Wallace to the ground resulting in serious injuries. The case settled for
 16 \$500,000.00 in 2022.

17 e. *Estate of Dylan Noble v. City of Fresno*, Case No. 1:16-cv-01690-DAD-BAM: alleged
 18 that the then 19-year-old was shot and killed by Fresno Police in 2016 outside a gas
 19 station. Officers said they were looking for an armed suspect, however, Noble was not
 20 armed. The case settled for 2.8 million in 2018.

21 f. *Estate of Willis v. City of Fresno*, Case No. 1:09-cv-01766-BAM: alleged Willis fired at
 22 one officer while intoxicated. Jury awarded 1.51 million but found him to be 80%
 23 liable due to being intoxicated, leaving only \$302,000.00 in damages plus attorney's
 24 fees and costs of \$824,495.00.

25 71. Plaintiffs allege on information and belief that despite the development of evidence
 26 substantiating significant misconduct and brutality in each of these cases, including the
 27 identification of multiple officers who witnessed wrongful conduct by their colleagues and
 28 failed to intervene or report it, virtually no disciplinary action was taken against any of the

offending officers, and their opportunities for continued employment, and even promotions were not affected. As a result, the Fresno Police Department developed de facto and well understood policies and practices that excessive force, up to and including unnecessary deadly force, could be used with impunity and without concern that any disciplinary action or other employment consequences would follow. The Individual Defendant Officers' brazen shooting of Max was the logical and inevitable result of such practices.

72. Defendant City of Fresno, through the aforementioned policy makers and managers, were responsible for creating, approving, and enforcing the unconstitutional policies, customs and/or practices described herein above. The aforementioned entities and individuals acted with deliberate indifference to the foreseeable effects and consequences of the policies, customs, and/or practices with respect to the constitutional rights of Max and other individuals similarly situated.

73. The unconstitutional policies, customs, and/or practices described in the above paragraphs and the prior supervisory failures and deliberate indifference of said Defendants were a proximate cause of and moving force behind the violations of Plaintiffs and Max's clearly established and well-settled rights in violation of 42 U.S.C. § 1983 as alleged above.

74. As a direct and proximate result of the acts and omissions set forth above, Max sustained injuries and damages as alleged above, including but not limited to physical pain, suffering and emotion distress up to the time of his death, loss of enjoyment of life and loss of life as well as penalties, costs and attorneys' fees as set forth in above.

FIFTH CAUSE OF ACTION

Americans with Disabilities Act and Rehabilitation Act

Title II of the ADA, 42 U.S.C. § 12131 et seq.; Rehabilitation Act, 29 U.S.C. § 794 et seq.

(On Behalf of the Estate of Maximiliano Sosa, Jr. Against the City of Fresno)

75. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this complaint.

76. At the relevant time, Max was a qualified individual with a disability within the meaning of both Title II of the ADA and the Rehabilitation Act.

1 77. The City of Fresno is a public entity that operates services, programs, and/or activities,
2 including law enforcement, covered by Title II of the ADA. On information and belief, the
3 City of Fresno receives federal funding, including for police services, and is therefore subject
4 to the Rehabilitation Act.

5 78. The City of Fresno denied Max the benefits of Title II ADA services, programs, and/or
6 activities and subjected Max to unlawful discrimination by, among other things, failing to
7 provide reasonable accommodations for his disabilities.

8 79. The City of Fresno was aware that its existing policies and practices made it
9 substantially likely that disabled individuals would be denied their federally protected rights
10 under the ADA in use-of-force interactions and acted with deliberate indifference in failing to
11 prevent or mitigate the denial of those rights.

12 80. The fatal shooting of Max was a direct and proximate result of the City of Fresno's
13 violations of Title II of the ADA and the Rehabilitation Act.

14 81. The City of Fresno is liable for the damages hereinbefore alleged in an amount to be
15 determined at trial.

16 **SIXTH CAUSE OF ACTION**

17 **Negligence**

18 **(California Code of Civil Procedure 377.30 et seq.)**

19 **(On Behalf of the Estate of Maximiliano Sosa, Jr. Against All Defendants)**

20 82. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
21 complaint.

22 83. The Individual Defendant Officers, while working as Fresno Police Officers acting
23 within the course and scope of their duties, were responsible for Max's shooting death.

24 84. At all times, the Individual Defendant Officers had a duty to act with due care in the
25 execution and enforcement of any right, law, or legal obligation. That duty includes, but is not
26 limited to, using reasonable care to prevent harm or injury to others while using appropriate
27 law enforcement tactics, giving appropriate commands, giving warnings, and not using any
28 force unless necessary, using less than lethal options, utilizing available mental health

resources, and only using deadly force as a last resort. Additionally, the general duties of reasonable care included but are not limited to the following:

85. To properly and adequately hire, investigate, train, supervise, monitor, evaluate, and discipline their employees against, and/or law enforcement officers to ensure that those employees/agents/officers act at all times in the public interest and in conformance with law.

86. To make, enforce, and at all times act in conformance with policies and customs that are lawful and protective of individual rights including those of plaintiffs and Max and to refrain from making, enforcing, and/or tolerating the wrongful policies and customs listed above.

87. The Individual Defendant Officers through their actions and omissions breached their duties of care and wrongfully caused the death of Max.

88. Defendant City of Fresno is vicariously liable for the wrongful acts of its employees and agents including the Individual Defendant Officers under California Government Code § 815.2(a).

89. Max died as a direct and proximate result of the Individual Defendant Officers' wrongful and negligent acts and omissions and as a direct and proximate result. Pursuant to California Code of Civil Procedure §§ 377.30, *et seq.*, the negligence cause of action supported by these facts survives Max's death.

90. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SEVENTH CAUSE OF ACTION

Wrongful Death

(California Code of Civil Procedure 377.60 et seq.)

(On Behalf of Plaintiffs Martha Zepeda Oliveras and Maximiliano Sosa, Sr. Against All Defendants, Unknown Law Enforcement Officers, and Does 1-30)

91. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this complaint.

92. The Individual Defendant Officers, while working as Fresno Police Officers acting within the course and scope of their duties, were responsible for Max's shooting death.

93. At all times, the Individual Defendant Officers had a duty to act with due care in the

1 execution and enforcement of any right, law, or legal obligation. That duty includes, but is not
2 limited to, using reasonable care to prevent harm or injury to others while using appropriate
3 law enforcement tactics, giving appropriate commands, giving warnings, and not using any
4 force unless necessary, using less than lethal options, utilizing available mental health
5 resources, and only using deadly force as a last resort. Additionally, the general duties of
6 reasonable care included but are not limited to the following:

7 94. To properly and adequately hire, investigate, train, supervise, monitor, evaluate, and
8 discipline their employees against, and/or law enforcement officers to ensure that those
9 employees/agents/officers act at all times in the public interest and in conformance with law.

10 95. To make, enforce, and at all times act in conformance with policies and customs that are
11 lawful and protective of individual rights including those of plaintiffs and Max and to refrain
12 from making, enforcing, and/or tolerating the wrongful policies and customs listed above.

13 96. The Individual Defendant Officers through their actions and omissions breached their
14 duties of care and wrongfully caused the death of Max.

15 97. Defendant City of Fresno is vicariously liable for the wrongful acts of its employees and
16 agents including the Individual Defendant Officers under California Government Code §
17 815.2(a).

18 98. Max died as a direct and proximate result of Defendants' wrongful and negligent acts
19 and omissions and as a direct and proximate result Plaintiffs Martha Zepeda Oliveras and
20 Maximiliano Sosa, Sr. sustained injuries and damages arising from their son's wrongful death,
21 including, but not limited to being deprived of the life-long love, companionship, comfort,
22 support, society, care, and sustenance of their son, and will continue to be so deprived for the
23 remainder of their lives. Pursuant to California Code of Civil Procedure §§ 377.60, *et seq.*, the
24 Plaintiffs are authorized to sue for the harm caused to them by Max's wrongful death.

25 99. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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EIGHTH CAUSE OF ACTION

Violation of Bane Act (Cal. Civil Code § 52.1)

(On Behalf of All Plaintiffs Against All Defendants)

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3
4 **100.** Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
5 complaint.

6 **101.** California Civil Code, §52.1 (the Bane Act), prohibits any person from interfering with
7 another person's exercise or enjoyment of his constitutional rights by threats, intimidation, or
8 coercion (or using unconstitutionally excessive force).

9 **102.** Conduct that violates the Fourth Amendment violates the California Bane Act.

10 **103.** The Individual Defendant Officers' use of deadly force was excessive and unreasonable
11 under the circumstances, especially since Max was having a mental health crisis, clearly
12 indicated through words and actions he would not harm anyone, except for himself. Max was
13 walking out of an apartment in a non-threatening manner, verbally and through actions. The
14 gunshots at Max occurred while his body had an involuntary reaction to being tased. Max was
15 only in need of mental health services. Defendants' actions thus deprived Max of his right to
16 be free from unreasonable searches and seizures under the Fourth Amendment and applied to
17 state actors by the Fourteenth Amendment.

18 **104.** At the time of the deadly shooting Max did not pose an immediate threat of death or
19 serious bodily injury and Max never verbally threatened anyone immediately prior to the
20 deadly shooting. Max was in need of mental health services. There's direct and circumstantial
21 evidence that the Individual Defendant Officers intentionally violated Max's rights under §
22 1983 by unlawfully detaining him, by attempting to unlawfully arrest him and by fatally
23 shooting Max multiple times, while he was already subdued from a taser.

24 **105.** The Individual Defendant Officers, while working as police officers for the Fresno
25 Police Department and acting within the course and scope of their duties, interfered with, and
26 attempted to interfere with the rights of the laws, to access to the courts, and to be free from
27 state actions that shock the conscience, by threatening or committing acts involving violence,
28 threats, coercion, or intimidation.

1 106. Max was caused to suffer extreme mental and physical pain and suffering a loss of life
 2 and of earning capacity. Plaintiffs have also been deprived of the life-long love,
 3 companionship, comfort, support, society, care, and sustenance of Max and will continue to be
 4 so deprived for the remainder of their natural lives. Plaintiffs are also claiming funeral and
 5 burial expenses and a loss of financial support.

6 107. The conduct of the Individual Defendant Officers was malicious, wanton, oppressive,
 7 and accomplished with a conscious disregard for the rights of Max entitling Plaintiffs to an
 8 award of exemplary and punitive damages. Plaintiffs bring this claim as successors-in-interest
 9 to Max and seek survival damages for the violation of Max's rights.

10 108. The Plaintiff's also seek attorneys' fees under this claim.

11 **NINTH CAUSE OF ACTION**

12 **Violation of the Unruh Act (Cal. Civil Code § 51)**

13 **(On Behalf of the Estate of Maximiliano Sosa, Jr. Against the City of Fresno)**

14 109. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
 15 complaint.

16 110. At the relevant time, Max was a qualified individual with a disability within the
 17 meaning of the Unruh Act.

18 111. The City of Fresno is a public entity that operates services, programs, and/or activities,
 19 including law enforcement, covered by the Unruh Act.

20 112. In violation of the Unruh Act, the City of Fresno denied Max the benefits of services,
 21 programs, and/or activities and subjected Max to unlawful discrimination by, among other
 22 things, failing to provide reasonable accommodations for his disabilities.

23 113. The City of Fresno was aware that its existing policies and practices made it
 24 substantially likely that disabled individuals would be denied their federally protected rights
 25 under the Unruh Act in use-of-force interactions and acted with deliberate indifference in
 26 failing to prevent or mitigate the denial of those rights.

27 114. The fatal shooting of Max was a direct and proximate result of the City of Fresno's
 28 violations of the Unruh Act.

1 115. The City of Fresno is liable for the damages hereinbefore alleged in an amount to be
2 determined at trial.

3 **TENTH CAUSE OF ACTION**

4 **Assault and Battery**

5 **(California Common Law)**

6 **(On Behalf of the Estate of Maximiliano Sosa, Jr. Against All Defendants)**

7 116. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
8 complaint.

9 117. The use of deadly and excessive force against Max, as alleged hereinabove, was
10 harmful and offensive contact to which he did not consent.

11 118. The defendants, either acting directly, or vicariously through their employees or agents,
12 were responsible for this harmful, offensive, unconsented contact.

13 119. The defendants' harmful, offensive, unconsented contact proximately caused the
14 Plaintiff's damages, as requested herein. These injuries and damages are compensable under
15 California law.

16 120. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 **PRAYER**

18 WHEREFORE, Plaintiffs prays for relief, as follows:

- 19 1. For general damages in a sum to be determined at trial;
- 20 2. For special damages, including but not limited to past, present, and/or future
21 wage loss, income and support, medical expenses and other special damages in a sum to be
22 determined according to proof;
- 23 3. For funeral and burial expenses according to proof;
- 24 4. For punitive damages and exemplary damages in amounts to be determined
25 according to proof as to the individual Defendants and each of them;
- 26 5. Any and all permissible statutory damages;
- 27 6. For reasonable attorney's fee pursuant to 42 U.S.C. §1988 and U.S.C. §794A;
- 28 7. For cost of suit herein incurred.

8. For prejudgment interest.

9. For such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury, consistent with their rights under the Seventh Amendment and other applicable law.

Dated: June 25, 2025

/s/ Kevin G. Little

Kevin G. Little

Michelle Tostenrude

Attorneys for Plaintiffs Martha Zepeda Olivares,
individually and on behalf of the Estate of
Maximiliano Sosa, Jr., and Maximiliano Sosa, Sr.

CODE OF CIVIL PROCEDURE 377.32
DECLARATION OF MARTHA ZEPEDA OLIVARES

The undersigned, Martha Zepeda Olivares, hereby declares as follows under penalty of perjury:

1. The decedent's true name was Maximiliano Sosa, Jr., and he was my son.

2. The decedent died on November 4, 2023 in Fresno County, California. I am informed and believe his death investigation remains pending and no death certificate is currently available.

3. No proceeding is now pending in California for administration of the decedent's estate.

4. I am one of the decedent's surviving parents, heir and his successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeed to the decedent's interest in this action or proceeding.

5. I am authorized to act on behalf of the decedent with respect to the decedent's interest in the action or proceeding.

6. No other person has a superior right to commence this proceeding for the decedent.

7. If called to testify as to the foregoing, I could truthfully and competently testify as to the above stated facts.

Sworn under penalty of perjury under the laws of the United States of America, this 25th day of June, 2025.

/s/ Martha Zepeda Olivares
Martha Zepeda Olivares